

Resolution No.: 15-881
Introduced: February 1, 2005
Adopted: February 1, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: APPLICATION NO. G-824 FOR AMENDMENT TO THE ZONING ORDINANCE
MAP, Timothy Dugan, Larry A. Gordon and Gus Bauman, Attorneys for Applicant, Miller
and Smith Land, Inc, OPINION AND RESOLUTION ON APPLICATION
Tax Account No. 02168441

OPINION

Application No. G-824, filed on May 5, 2004, by Applicant Miller and Smith Land, Inc., requests reclassification of a 23.8211-acre parcel of unimproved land ("Eastside") from the R-200 Zone to the PD-11 Zone. The applicant proposes to develop the property with 290 residential units, including 232 stacked ("2 over 2") townhome condominiums and 58 single-family attached (SFA) townhome units. Forty of the units will be Moderately Priced Dwelling Units (MPDU's). The Eastside Property (Part of Liber 15162, Folio 596) includes Parcel P600 and a previously dedicated right-of-way, which are located on the south side of Shawnee Lane, between Gateway Center Drive and MD 355, in Clarksburg.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated October 15, 2004, recommended approval. The Montgomery County Planning Board ("Planning Board") considered the application on October 21, 2004 and, by a vote of 4 to 0, also recommended approval, as stated in a memorandum dated October 22, 2004. On November 12, 2004, the Planning Board filed a revised memorandum, indicating its approval of the Preliminary Water Quality Plan (PWQP), as well as its recommended approval of the requested rezoning.

The Clarksburg Civic Association Executive Committee (CCAEC) sent Technical Staff an e-mail stating that it opposed PD-11 rezoning, but no representative of that organization appeared at the hearing. A public hearing was noticed for October 25, 2004, and it proceeded as scheduled. There was no opposition testimony, and no member of the community participated at the hearing. Applicant filed a revised Development Plan (Exhibit 53(d)) on November 8, 2004. No further public comment was received, and the record closed on November 12, 2004.

The subject property is located on the south side of Shawnee Lane, approximately 100 feet east of its intersection with Gateway Center Drive and approximately 2,000 feet west of MD 355, in Clarksburg. It is generally rectangular in shape, and it is approximately 1,650 feet long and 650 feet wide, comprising 1,037,650 square feet (23.8211 acres) of land. That Gross Tract Area to be rezoned includes the current Parcel P.600, which contains 996,188 square feet (22.8693 acres), as well as 41,462 square feet (0.9518 acres) of land previously dedicated to Shawnee Lane. Approximately 0.3411 acres will be dedicated in the future to provide 25 feet of additional right-of-way for Shawnee Lane. The subject property was placed in the R-R Zone during the 1958 Countywide Comprehensive Zoning. In October of 1973, Text Amendment 73013 rezoned the property from the R-R Zone to the R-200 Zone. The 1994 Clarksburg Sectional Map Amendment (G-710) retained the property's R-200 zoning.

The subject property is currently undeveloped. The southern side of the property is densely wooded and is defined by slopes and a stream valley. Two streams converge at this portion of the property and ultimately flow to a tributary of Little Seneca Creek. The property has a frontage of approximately 594 feet on Shawnee Lane and is entirely within the Clarksburg Special Protection Area. Slopes on the subject property are relatively gentle, at an average slope of five percent for the area above the stream confluence; the confluence of the two streams creates a stream valley buffer area of approximately six acres, representing about 26% of the net tract area; and the property is mostly clear pastureland, but includes some scattered

wooded areas with most of the forested area at the confluence of the two streams. Approximately 6.6 acres, or 29% of the net tract area is forested.

The surrounding area is bounded by Clarksburg Road to the north and northwest, I-270 to the west, West Old Baltimore Road to the south and Frederick Road (MD 355) to the east and northeast. This area lies within the 900-acre area that is identified as the Transit Corridor District Study Area in the 1994 Clarksburg Master Plan. The surrounding area is characterized by a large employment facility, LCOR (formerly known as COMSAT/ Lockheed Martin), undeveloped land, schools and related service facilities, and scattered residential uses. Immediately west and northwest of the subject property are the LCOR property and the Gateway 270 Corporate Office Park in the I-3 Zone. To the north across Shawnee Lane are undeveloped parcels of land in the R-200 Zone. The Board of Education Bus Depot abuts the property to the east in the R-200 Zone, and further east are a moving company in the I-3 Zone and the new Clarksburg Area High School in the R-200 Zone. To the south, the subject property abuts undeveloped, mostly wooded area in the I-3 Zone.

Pursuant to Code § 59-D-1.11, development under the PD-11 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-11 Zone. The Development Plan in the present case includes a land use plan, labeled "Development Plan," that shows the proposed locations of all structures, as well as additional information regarding the planned development, both in diagram and textual form. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those used in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements listed by Applicant in this case are as follows:

1. Moderately Priced Dwelling Units

All required MPDUs will be provided on the Property.

2. Road Improvements

The Applicant or its successors or assigns (the "Applicant") will improve or fund the transportation capacity improvement of Shawnee Lane, a County Road, to an arterial standard from Gateway Center Drive to Frederick Road (MD Route 355).

Any additional right-of-way or associated easements necessary for the improvement of Shawnee Lane will be acquired or funded by the Applicant.

3. Connections to Shawnee Lane and Adjoining Properties

Consistent with Clarksburg Master Plan objectives for strong pedestrian and vehicular linkages and accessibility to Transit Stops and throughout the neighborhood, sidewalk and road connections will be provided to: (1) improved Shawnee Lane to the north; (2) LCOR's Comsat property to the west; and (3) the Board of Education's property to the east.

4. Recreational Facilities

All required recreational facilities will be provided on the Property.

5. Forest Conservation

All required forest conservation measures will be provided on the Property.

6. Stream Valley Preservation

With the exception of a possible sewer outfall, the existing wooded stream valley on the Property will be preserved in its entirety.

7. Stormwater Management

With the exception of possible upgrading of the existing stormwater management facility on the Post Office property, all stormwater management facilities will be provided on the Property.

8. Gateway Center Drive and Stringtown Road Extended

At or prior to preliminary plan of subdivision, Applicant shall meet with DPWT and the Technical Staff of M-NCPPC to determine what if any modifications to the intersection at Gateway Center Drive and Stringtown Road are required to meet LATR standards, and Applicant will undertake such changes in accordance with the schedule specified by DPWT and the Technical Staff of M-NCPPC.

Applicant proposes to construct 290 townhome units in the Clarksburg "Transit Corridor District," consistent with the *1994 Clarksburg Master Plan's* concept of residential development near a proposed transitway (A-19 Observation Drive). As shown on the Development Plan, the 290 residential units will consist of 232 stacked ("2 over 2") townhome condominiums and 58 single-family attached (SFA) units.

Half of the condominiums units are planned as two bedroom homes and the other half as three bedroom homes. The SFA units will each be owned in fee simple. Seventeen of those units will have front-loading garages, while 41 are designed with rear loading garages. Forty of the condominium units will be Moderately Priced Dwelling Units (MPDU's).

The PD-11 Zone permits a density of 11 units per acre. Applicant's 23.82 acres would thus yield a permitted base density of 262 Dwelling Units (11 per acre x 23.82 acres = 262.02). As shown in the Applicant's "General Notes and Site Data," Applicant seeks a density bonus of an additional 28 units, which is 10.7% above the 262 unit base density. To obtain a density bonus of an extra 28 units, bringing its total density to 290 units, Applicant is required by Montgomery County Code §25A-5(c)(3), to have 13.6% of its units as Moderately Priced Dwelling Units (MPDU's). Applying that factor of 13.6% to the planned 290 units yields a figure of 40 required MPDU's, which Applicant will scatter throughout the development.

Applicant has also committed to dedicating to the public right-of-way, a 25 foot strip of land along Shawnee Lane. This new dedication of 0.3411 acres is depicted in the diagram on the Development Plan, and it is in addition to the prior Shawnee Lane dedication which Applicant references in the "General Notes and Site Data" on the Development Plan. It also calls for 58.5% green space, though only 50% is required for the PD-11 Zone, and 648 parking spaces, though only 522 spaces are required the Zoning Ordinance for the number of dwelling units.

Development is planned in three phases, commencing on the western end of the property, abutting Shawnee Lane. Phase One will consist of 74 "2 over 2" "stacked" condominiums and 17 SFA townhomes. Phase Two, in the middle portion of the property will consist of 104 of the stacked condominiums units and 20 SFA townhomes. Phase Three, toward the eastern end of the property will consist of 54 stacked condominiums and 17 SFA townhomes. Each phase, when complete, will incorporate vehicular and pedestrian circulation systems, and all required utilities, recreational amenities and open spaces.

The Clarksburg Civic Association Executive Committee (CCAEC), in an e-mail to Technical Staff, raised concerns about density of development before the transitway is constructed; the amount of green space which will be provided; the health impact of the nearby school bus depot; the effect of the development on well water; the calculation of MPDU's and the language of certain provisions of the Zoning Ordinance. The CCAEC's critique of the Zoning Ordinance itself cannot be considered in this type of proceeding, and the Council finds that the other concerns raised by CCAEC have been satisfactorily answered by the evidence in this case, as set forth in the Hearing Examiner's report.

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): consistency with master plan and other County policies.

The subject site is located within the area governed by the *Clarksburg Master Plan*, approved and adopted in June, 1994. The Master Plan's recommendations for the subject site center around the Plan's proposal for "a comprehensive transit system that will reduce dependence on the automobile." Master Plan, page 22. A significant part of this proposal is a north-south Transitway that "will serve the transportation needs of the residents and workers in the I-270 Corridor north of Shady Grove." The subject property is within "Transit Corridor District" and has a recommended density of 9 to 11 dwelling units per acre, consistent with the PD-11 Zone sought in this case.

The proposed Eastside Development Plan will introduce a number of residential units into an existing employment area within walking distance of two proposed Transit Stops, which is a major goal for the development of this area as envisioned by the Master Plan. It also fulfills the Master Plan objective of improving east-west roadway connections through Binding Elements 2 and 8, which respectively call for Applicant to widen Shawnee Lane to arterial standards and to make any modifications necessary at the

intersection of Stringtown Road and Gateway Center Drive to meet Local Area Transportation Review (“LATR”) requirements.

The proposed Transitway will be run just to the east of the subject site, and will have two Transit Stops located between Newcut Road Extended and MD 121 (Clarksburg Road). The center of the subject site is approximately 1,500 feet from the proposed Shawnee Lane Transit Stop to the north and approximately 2,000 feet from the Newcut Road-Extended Transit Stop located to the south.

Near the Newcut Transit Stop, the Master Plan recommends that development should be employment-oriented to serve Comsat. Master Plan, page 54. The Plan also notes that the recommended mix of residential uses at this location will only occur “if vacant land on the Comsat site is developed for residential uses.” The Eastside development provides for residential development of a portion of Comsat property, thus satisfying the Plan’s objective.

Finally, the Master Plan “[e]ndorses an extensive network of interconnected streets to provide local access within neighborhoods.” Master Plan at page 24. As noted by Technical Staff, the Development Plan provides such an interconnected street system through its multiple connections to adjacent properties and its planned pedestrian sidewalk network.

Under the County’s Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council’s determination in a rezoning case as to whether the reclassification would serve the public interest

Pursuant to the 2003-05 Annual Growth Policy (AGP) Policy Element (p.14), “[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” There is no such evidence in this case, and the District Council finds these services to be adequate.

Under the 2003-05 AGP Policy Element, subdivision applications are subject to LATR requirements. LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. Technical Staff identified four intersections near the subject site as critical in determining whether Applicant will meet the applicable congestion standard for the Clarksburg Policy Area. Both Technical Staff and Applicant’s traffic engineer applied the congestion standard in effect on the date of the application, which was May 5, 2004 (*i.e.*, 1,500 Critical Lane Volume (CLV) in the Clarksburg area). The congestion standard in effect since July 1, 2004 for the Clarksburg area is 1,450 CLV. This distinction does not make a difference in this case because all intersections will meet both standards following roadway modifications to which Applicant has committed in Binding Element 8.

Applying the FY 2004 Annual Growth Policy staging ceiling capacity in effect at the time the application in this case was filed, Technical Staff determined that there was insufficient capacity available for the housing development proposed by Applicant. As of May 31, 2004, there was a negative staging capacity of -5,028 housing units in the Clarksburg Policy Area. The Applicant proposed to widen Shawnee Lane to a four-lane divided arterial roadway from Gateway Center Drive to Frederick Road (MD 355) in order to provide sufficient capacity, and Technical Staff determined that the proposed roadway improvements would provide sufficient staging ceiling capacity to accommodate the proposed development. The District Council finds that both the LATR and the PATR standards have been satisfied.

School capacity is a significant concern in this case because of the size of the proposed development. The subject property is located within the Clarksburg/Damascus Cluster, and it is estimated that the Eastside Development of 290 dwelling units will generate 81 elementary, 27 middle and 31 high school students.

The subject site is served by Clarksburg Elementary School, Rocky Hill Middle School and Damascus High School. Clarksburg Elementary School is projected to remain over capacity for the six year forecast period. Two new elementary schools are scheduled to open, one for the 2006-07 school year (Clarksburg/Damascus Elementary School #7) and the other for the 2009-10 school year (Clarksburg/Damascus Elementary School #8). The opening of these schools is intended to address projected space shortages at Clarksburg Elementary School.

Rocky Hill Middle School is projected to exceed capacity beginning in 2008-2009 school year. The 1994 Master Plan identifies a site for a future middle school located in the Greenway Village Subdivision; however, the school is not yet scheduled for construction. At the high school level, Damascus High School is projected to remain over capacity for the six year forecast period. A new high school, the Clarksburg Area High School, is scheduled to open for the 2006-07 school year. The new school is expected to relieve projected space shortages at Damascus High School.

Applicant produced a chart showing how the timing for construction of new schools will match up with the schedule of construction and occupation of the Eastside project. Based the timing shown in this chart, the testimony of record and the fact that the current Annual Growth Policy schools test finds the school capacity adequate in the Clarksburg Cluster, the District Council concludes that MCPS will be able to handle the increased demand projected from the subject development.

Under the FY 2003-05 AGP Policy Element, p.14, "applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is

presently available, is under construction, is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (i.e., categories I, II, and III).”

Technical Staff reports that public water and sewer serve the general Shawnee Road area. Water category is W-1, and the project site is eligible for sewer service. Based on the record in this case, including the completion of the Crystal Rock Wastewater Pumping Station and associated Force Main, the District Council finds that there will be adequate water and sewer service for the site.

The District Council concludes that the proposed development plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The requirements for the PD-11 Zone are found in Code §59-C-7.1. PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings, all of which must be spelled out on a development plan.

The lengthy purpose clause for the PD-11 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. Generally, it is the purpose of the Zone to implement the general and master plans by permitting “unified development consistent with densities proposed by the master plans.” Development in the PD Zones should be “so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development.” It is intended to produce a

“coordinated mixture of residential and convenience commercial uses . . . and encourage a broad range of housing types....” It is also a purpose of the PD Zones to take advantage of open space and trees, enabling them to function “as places for relaxation, recreation and social activity.” The purpose clause also encourages large scale developments and creation of “pedestrian circulation networks, separated from vehicular roadways . . . [which will] minimize reliance upon the automobile as a means of transportation.” Finally, it is the purpose of the PD Zones “to achieve a maximum of safety, convenience and amenity for both the residents ... [and their neighbors], and to assure compatibility and coordination of each development with existing and proposed surrounding land uses.”

As discussed above, the proposed development will be in substantial compliance with the *1994 Clarksburg Master Plan*. Accordingly, the requested reclassification will comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives.

Social and community interaction is facilitated and encouraged by the site layout, which provides a large green area in the center of the development and numerous pocket parks throughout. It is also well networked with streets and sidewalks to encourage residents to meet their neighbors while walking. Applicant strives for “unit connectivity of pedestrian and vehicles, access ways between properties, and within the property.” Alley ways and garages are used to keep parked cars off the major streets. Community open space is integrated with the plan and is usually spread throughout the residences instead of just having the one large parkland. There is an extensive pedestrian network and a variety of larger and smaller open spaces, passive outdoor recreation area, green spaces, and a larger green space toward the center of the property where a gathering of community residents could occur. The development is also quite compact, thereby encouraging walking. There will also be a road and promenade fronting on the storm water management basins, thus creating a walking environment and making the storm water management basins a part of the recreational and green space for the public.

The Master Plan recommends the area immediately surrounding the Property to be developed as a mixed-use center. The dominant residential type recommended is multi-family (30%-50%) and single-family attached (40% to 60%) with only 5% to 10% of the residences recommended as single-family detached (Master Plan, page 39). There is some variety in both housing types and kinds of ownership provided in this Development Plan, and the Council finds it likely that other local development will provide the kind of variety sought for the Transit Corridor District as a whole.

Another purpose of the Zone is to preserve and take advantage of trees and to minimize grading. Applicant's plan achieves this goal. The southern portion of the property contains approximately six acres of reforestation and preservation area, with varying topography and vegetation. This area also provides a natural barrier from potential visual and noise intrusion. The Development Plan works very well with the natural features and topography on the site, and thus there will be no need for massive grading. The design of the project has minimized grading to prevent the erosion of the soil and preserve natural vegetation. Almost the entire forest stand on this property is being retained. All of the forest stand within the stream valley buffer is being retained, and there is no grading within that area.

The Purpose Clause also calls for use of open space, "not only for use as setbacks and yards," but also "for the general benefit of the community and public at large." Once again, Applicant has met this objective. The units are oriented in such a manner that the residents would be able to enjoy views into green areas throughout the site, including the stream valley and around the stormwater management basins. Stormwater management basins, in addition to their normal function, are thus utilized as part of the amenity package for the planned community, by creating four small cells separated by berms which will have walking paths and some type of nature exhibits, such as flowering shrubs. A large portion of the development will be green space (58%), and there will be eleven picnic sitting areas and three tot lot areas, as well as larger open play areas in the central open space, which is about 90 feet wide.

The linkages recommended in the Purpose Clause are provided by an extensive sidewalk system that interconnects all the open space areas. There are sidewalks also along the street frontages of the housing units, all of which interconnect the residences to the open space and to Shawnee Lane, where the transit is, so everything will be easily accessible for both recreation and transit. Moreover, with a total of 648 parking spaces (an average of 2.23 spaces per dwelling unit), adequate parking accommodation is provided for residents and visitors. As to safety, Technical Staff concluded that “the proposed access to the site as shown on the development plan [is] safe and adequate . . . [and] that the internal pedestrian circulation and walkways provide for a safe and adequate movements of pedestrian traffic.”

With regard to compatibility with neighboring properties, the scale and the magnitude of this development, as well as the style of architecture, will work very well with development, past and present. The *Clarksburg Master Plan* recommends the area immediately surrounding the Property to be developed as a mixed-use center. The dominant residential type recommended is multi-family (30%-50%) and single-family attached (40% to 60%) with only 5% to 10% of the residences recommended as single-family detached (Master Plan, page 39). The *Master Plan* recommends that the LCOR/Comsat site to the west be developed with up to 2.3 million square feet of employment or with up to 4 million square feet of transit-oriented development. (Master Plan, pages 56-57). It recommends R&D, Institutional and residential at a density of 2 to 4 units per acre for the wooded and open vacant land to the south (Master Plan, page 55). The Board of Education’s 20 acre school bus depot to the east is recommended for a residential community compatible in density to the subject development. The area immediately north of the subject property is recommended for residential density of 9 to 11 units per acre, and the area further north and east is recommended for 2 to 4 units per acre. (Master Plan page 55). The District Council finds, as did Technical Staff, that the proposed development is designed in a manner that is compatible with and will complement existing and future developments in the immediate area.

Through a combination of architectural, topographical and landscaping features, the proposed development represents retention of sensitive environmental features, a balanced site design and adequate green space, which at the same time create an aesthetically pleasing environment on the subject property. Given the fact that a large portion of the property is within the stream valley and not developable, the proposed design and mix of the residential units appear to be appropriate and desirable for the subject site.

In sum, the proposed development is consistent with the intent and purposes of the PD-11 Zone. We next look to the “standards and regulations” of the PD-11 Zone, which are spelled out in Zoning Code §§59-C-7.12 through 7.18.

Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.” The applicable Master Plan, the *1994 Clarksburg Master Plan*, recommends that the subject property be developed under the PD-9 or the PD-11 Zone, which permits up to 11 dwelling units per acre. Accordingly, this provision would be satisfied in this case.

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criteria (a) requires that the site “contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.” As noted above, the subject property is recommended for the PD-11 Zone by the Master Plan, and contains 23.82 acres. Thus, the permitted base density equals 262 dwelling units (11 X 23.82). This figure clearly exceeds the 50 dwelling unit minimum under this requirement. Moreover, the development will actually have a total of 290 units because it is allowed a 28 unit bonus based on its inclusion of 40 MPDU’s.

Pursuant to Code §59-C-7.131, all types of residential uses are permitted in the PD-11 Zone except those over four stories tall. All the dwelling units proposed by Applicant are four stories, or less, and all are therefore permitted. However, the statute also requires a minimum percentage of townhome-and-attached units (20%) and four-story-or-less, multi-family units (35%). Since 290 units are proposed, 20%

of that number would require 58 townhome-and-attached units, which is the number provided for in the Development Plan. The remainder, 80%, will be four-story-or-less, multi-family units, clearly exceeding the 35% minimum for that type of unit.

Code Sections 59-C-7.132 and 7.133, concern commercial and other uses permitted, but there are no non-residential uses proposed here.

Code Section 59-C-7.14, specifies the permitted density of residential development for the Zone. The Master Plan recommends the PD-11 Zone, which is medium-density category permitting a maximum of 11 dwelling units per acre. As noted above, the base density permitted for the acreage in question is 262 units. However, Code §59-C-7.14(c) permits a bonus density if there is a minimum of 12.5% MPDU's. The subject Development Plan calls for 13.6% MPDU's and a bonus density of 28 units (10.7%). The District Council finds that Applicant's calculation is consistent with the statutory requirements.

Code Section 59-C-7.15, evaluates compatibility. The District Council finds that the proposed development will be compatible with other uses existing or proposed in the vicinity of the planned development, for the reasons set forth above in the discussion of the Zone's Purpose Clause.

Code Section 59-C-7.16, requires 50% green space for the PD-11 Zone. The Development Plan shows 58.5% (13.94 acres) of the subject property in green area, thus exceeding the 50% minimum required under the PD-11 density category.

Code Section 59-C-7.17, requires specification of land to be dedicated for public use. The Development Plan calls for dedication of approximately 0.3411 acres in a 25 foot wide right-of-way on Shawnee Lane. There was a prior dedication of 0.9518 acres to the Shawnee Lane right-of-way.

Code Section 59-C-7.18, requires parking facilities in accordance with Zoning Ordinance §59-E, which calls for 2 parking spaces for each single-family townhome, 1.5 spaces for each multi-family dwelling unit with 2 bedrooms and 2 spaces for each multi-family dwelling unit with 3 bedrooms. The total number of spaces required for this development would be 522. The Development Plan promises a

total of 648 parking spaces (an average of 2.23 spaces per dwelling unit), and it therefore exceeds the statutory requirement.

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-11 Zone, it has been discussed in that context in this resolution. The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-11 Zone, the District Council concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

In sum, the District Council finds that Applicant has complied with all of the purposes, standards and regulations of the PD-11 Zone, as set forth in Article 59-C of the Code.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The proposed development will have two access points from Shawnee Lane, one full access and one right-in/right-out only. The full access point is to be located on the eastern edge of the property. It is proposed as a three-lane driveway, one entering and two exiting the site. This access will be reconstructed in the future to have four lanes, two egress and two ingress lanes, when the adjoining school property is developed. The new driveway will be shared between this development and the adjoining development. The safety and adequacy of the access and circulation systems were discussed above in connection with the PD-11 Zone’s Purpose Clause. The District Council agrees with Technical Staff’s conclusion that the proposed access to the site, as shown on the development plan, is safe and adequate, and the internal pedestrian circulation and walkways provide for a safe and adequate movements of pedestrian traffic.

Accordingly, the District Council concludes that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

§59-D-1.61(d): preservation of natural features

Because the subject property is located within the Little Seneca Creek Watershed of the Clarksburg Special Protection Area, it received strict environmental scrutiny by the Planning Board and the Department of Permitting Services (DPS). Its Preliminary Water Quality Plan (PWQP) was approved by both agencies.

Applicant also submitted an approved Natural Resources Inventory and Forest Stand Delineation (Exhibit 34(h)), a revised Concept Grading Plan (Exhibit 36(b)), a revised Concept Water and Sanitary Sewer Plan (Exhibit 36(d)), and a revised Concept Forest Conservation Plan (CFCP-Exhibit 36(e)). The Technical Staff reported no environmental issues warranting denial of this application. Moreover, as mentioned in the discussion of the Purpose Clause, above, the project design has minimized grading to prevent the erosion of the soil and preserve natural vegetation. Almost the entire forest stand on this property is being retained.

The District Council concludes that Applicant has demonstrated the environmental controls required by the Code.

§59-D-1.61(e): common area maintenance.

Applicant is the contract purchaser of the subject property from owner LCOR at Clarksburg, LLC. Applicant will use the same property management company that Applicant uses for maintenance in all of its Communities. Applicant establishes a yearly budget for the property management company and the homeowners association, which includes ongoing maintenance funds such as minor paving repairs, grass cutting, and the placement of landscaping, and it also will include reserve funds for replacement of any physical feature that is worn out over time. Applicant will take steps to ensure that, not only is the year-to-

year and day-to-day maintenance being met, but also long term replacement costs are provided for as well. Draft Homeowners Association Documents and Condominium Documents have also been filed.

The District Council finds that Applicant has sufficiently demonstrated ownership of the property, which it has contracted to purchase, and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The final finding which is required under Maryland law is that the proposed rezoning will be in the public interest. The proposed development will promote the “health, safety, morals, comfort, and welfare of the inhabitants of the regional district” (*i.e.*, the public interest) by providing the kind of residential development called for in the *1994 Clarksburg Master Plan*, without any adverse effect on public facilities. It will bring residents within walking distance of planned transit stops and local employment options, consistent with the Master Plan. In sum, the proposed rezoning is in the public interest.

For these reasons and because to approve the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-824, requesting reclassification from the R-200 Zone to the PD-11 Zone, of a 23.8211-acre parcel of unimproved land, known as “Eastside” (Part of Liber 15162, Folio 596) including Parcel P600 and a previously dedicated right-of-way, which are located on the south side of Shawnee Lane, between Gateway Center Drive and MD 355, in Clarksburg, is hereby **approved** in the

amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 53(d), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.

A handwritten signature in cursive script, reading "Elda M. Dodson", written over a horizontal line.

Elda M. Dodson, CMC
Acting Clerk of the Council